# Performance Track
## Member Experiences

## PERMIT NEGOTIATION STRATEGIES AND APPROACHES FOR SUCCESS

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# WHAT IS A PERMIT?

**It is:**

- **… a contract with the community in which we operate (***it specifies mutual responsibilities***)**
- **… authorized and formatted by laws (***based on goals, assumptions and rules developed by those who know little about site-specific issues***)**
- **… an interpretation of how the law and science will be applied to a specific site (***it often follows technical guidelines developed by national/ "EPA corporate (HQ)" staff***)**

# WHAT IS A PERMIT?

**It therefore is composed of:**

- **… a Relationship element**
- **… a Legal element**
- **… a Technical element**

**and successful negotiations will have:**

- **… a relationship strategy, a legal strategy AND a technical strategy**

# RELATIONSHIP STRATEGIES

## Recognize and Respect Common Objectives

- Facility objectives: to be permitted with conditions that are readily attainable and that allow for operational flexibility
- Permit-writer objectives: to develop and implement facility permit that:
  1. Is environmentally protective
  2. Follows requirements of the law and EPA
  3. Doesn't require deep thought and time input

## Relationship development

- It is okay to communicate outside of permit negotiations, to share that which you are proud of and to learn how regulators define success

# LEGAL STRATEGIES

## What is written counts the most

- **The legal Permit is based on another "legal" document, the Permit Application**
  - Permit covers only processes presented in application
  - Permit can act as a shield, protecting a regulated party from scrutiny and damages IF the application is complete (e.g. it anticipates normal growth and operational changes)
- **Everything that is in writing is important , for example:**
  - Measurements (type, frequency and reporting)
  - Responsibilities and consequences when there are deviations from expected norms

## Conflict anticipation and avoidance

- **Know what you are required to do and whether you can do it**
- **Anything not negotiated, agreed to and documented before the pain of non-compliance, will be more painful and difficult to resolve at a later time**

# TECHNICAL STRATEGIES

## Scientific Rationale

- **Permit covers known pollutants suspected to be generated by disclosed processes**
  - Pollutants => that which can cause harm
    - Emerging pollutants: not yet proven to cause harm so keep out of permit, or monitor them only if lab method is adequate
    - Surrogate pollutants: easier to monitor, therefore easier to regulate (can industry use them as well???)
- **Water quality-based limits are set to prevent harm during low flow periods**
  - Utilizes science on environmental capacity, waste load allocations, No Observed Effect Concentrations and safety factors

## Statistical Rationale

- **Infrequent monitoring could lead regulators to use bigger uncertainty factors in setting limits**
  - Continuous “process” monitoring may justify lower uncertainty factors (without liability of “compliance” monitoring)

# SUMMARY

## Two key points in permit negotiations

- **Transform your relationship with the permit authorities**
  - They are doing their job, you are doing yours, but you actually share objectives
- **Understand the requirements listed in your permit and what challenges you could have in meeting them before signing off on (accepting) the permit**
  - Look, evaluate, question, and negotiate